

REMARKS

This amendment is in response to the Examiner's office action dated May 31, 2005.

1. Information Disclosure Statement

Applicants acknowledge the signed copy of the IDS from the Examiner.

2. Claim Objections

The Examiner objects to claims 3, 4 and 6 because of informalities. Applicant thanks Examiner for the suggested changes. The claims have been amended and Applicant respectfully requests reconsideration.

4. Claim Rejections – 35 U.S.C. § 112

The Examiner rejects claims 1-8 under the first paragraph of 35 USC 112. Claims 1 and 7 have been amended to include deposit information, and the specification has been amended on page 49 under the paragraph "DEPOSITS" to specify the deposit information for this variety. Applicants respectfully submit that these claims are now in form for allowance.

The Examiner rejects claim 6 because many of the members of the Markush group are not tissue types, but rather cell types or organ types and hence do not further define "tissue". Applicant respectfully traverses. The fact that members of the Markush group are cell types does not preclude them from further defining the term "tissue". The Merriam-Webster dictionary entry for tissue, attached as Appendix 1, defines tissue as "an aggregate of cells usually of a particular kind together with their intercellular substance that form one of the structural materials of a plant or an animal". Applicant asserts that the Markush group members further define tissue, and respectfully requests that this rejection be withdrawn.

The Examiner rejects claim 8 because "It is not clear if the soybean plant that is grown is a plant from the harvested seed or if it is some other soybean plant".

Applicants respectfully traverse. Claim 8, which is a method claim, has been amended to be consistent with Examiner's recent suggested modification in other cases of the same scope and filing year, and applicants respectfully submit that this claim is now in form for allowance.

4. Claim Rejections – 35 U.S.C. § 102/103

The Examiner rejects claims 1-8 as being anticipated by or obvious over Tinius (US Pat No. 5,684,229, hereinafter the '229 patent). Applicant respectfully traverses. Soybean variety 95M80 has a spherical seed shape, as disclosed in Appendix A of the PVP Certificate for 95M80 (Attached as Appendix 2). In contrast, 91112039947 has a spherical-flattened seed shape as disclosed on page 5, line 37 of the '229 patent. Also, 95M80 has a seed size of 13.7 grams per 100 seeds (Exhibit A of PVP Certificate for 95M80). In contrast, 9111203997 has a seed size of 12 seeds per 100 grams.

In addition, these two lines were derived from different parents. As disclosed in the PVP certificate for 95M80, a copy of which is provided as Appendix 2, this line was derived from 95B33/YB54D. (Exhibit A of PVP Certificate No. 200500074). In contrast, 91112039947 was derived from different parents. As disclosed on page 4 of the '229 patent, 91112039947 was derived from A5979x40-3-2. Therefore, 95M80 is not identical to 91112039947.

The Examiner has stated that if the claimed plant and seeds of the instant invention are not identical to 91112039947, then it appears that 91112039947 only differs from the claimed plants and seeds due to minor morphological variation wherein said variation would not confer a patentable distinction to 95M80 plants. Applicant respectfully traverses. The differences presented *supra* show that 95M80 is not identical to 91112039947, and the Examiner has not provided any reference that may be combined with 91112039947 to arrive at the present invention. The Examiner has not provided a single reference with all elements of the claimed invention, nor a reference that could be combined with the '229 patent to produce 95M80. Applicant respectfully asserts that a prima facie case of obviousness has not been made, and reconsideration is respectfully requested.

The Examiner rejects claims 1-8 as being anticipated by or obvious over Rhodes (US Pat No. 5,998,705, hereinafter the '705 patent). Applicant respectfully traverses. There are a number of differences between these two lines.

95M80 and the plant of the '705 patent were derived from different parents. As disclosed in Exhibit A of the PVP certificate for 95M80, this line was derived from 95B33/YB54D. (PVP No. 200500074). In contrast, 9392449518696 was derived from entirely different parents. As disclosed on page 5, line 8 of the '705 patent, 9392449518696 was derived from A5843xOSU53928x40-3-2. These two lines share no common parentage.

In addition, 95M80 has a spherical seed shape as disclosed in Exhibit C of the attached PVP certificate. 9392449518696 has a spherical-flattened seed shape as disclosed in the '705 patent on page 5, line 40. Also, 95M80 is susceptible to sulfonylurea as disclosed in Exhibit C of the attached PVP certificate. 9392449518696 is resistant to sulfonylurea as disclosed in the '705 patent on line 57, page 5.

In summary, applicants respectfully assert that 95M80 is not identical to 9392449518696, and the Examiner has not provided any reference that may be combined with 9392449518696 to arrive at the present invention. Applicants respectfully request reconsideration.

The Examiner rejects claims 1-8 as being anticipated by or obvious over Luzzi (US Pat No. 6,087,562, hereinafter the '562 patent). Applicant respectfully traverses. 95M80 has a spherical seed shape as disclosed in Exhibit C of the attached PVP certificate. 9524879614838 has a spherical-flattened seed shape as disclosed in the '705 patent on page 5, line 36. In addition, 95M80 and the plant of the '562 patent were derived from different parents. As disclosed in Exhibit A of the PVP certificate for 95M80, this line was derived from 95B33/YB54D. (PVP No. 200500074). In contrast, 9524879614838 was derived from entirely different parents. As disclosed on page 5, line 7 of the '705 patent, 9524879614838 was derived from A5959/2/xAG5801. These two lines share no common parentage.

In summary, applicants respectfully assert that 95M80 is not identical to 9524879614838, and the Examiner has not provided any reference that may be

combined with 9524879614838 to arrive at the present invention. Applicants respectfully request reconsideration.

The Examiner rejects claims 1-8 as being anticipated by or obvious over Hicks (US Pat No. 6,613,966, hereinafter the '966 patent). Applicant respectfully traverses. Soybean variety 95B57 demonstrates good tolerance frogeye leaf spot as disclosed on page 8 of the '966 patent on line 39. In contrast, 95M80 has a score of "5" for frogeye leaf spot as disclosed on page 13 of the specification in Table 1, indicating a moderate level of necrosis. In addition, 95B57 has moderate resistance to stem canker as taught on page 9, line 9 of the '966 patent. 95M80 exhibits excellent resistance to stem canker, as disclosed on page 11 of the specification. Therefore, 95M80 is not identical to 95B57.

The Examiner has stated that if the claimed plant and seeds of the instant invention are not identical to 95B57, then it appears that 95B57 only differs from the claimed plants and seeds due to minor morphological variation wherein said variation would not confer a patentable distinction to 95M80 plants. Applicant respectfully traverses. The differences presented *supra* show that 95M80 is not identical to 95B57, and the Examiner has not provided any reference that may be combined with 95B57 to arrive at the present invention. The Examiner has not provided a single reference with all elements of the claimed invention, nor a reference that could be combined with the '966 patent to produce 95M80. Applicant respectfully asserts that a prima facie case of obviousness has not been made, and reconsideration is respectfully requested.

CONCLUSION

In conclusion, Applicant submits in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 16-1856.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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